

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

MAY 31 2002

Geraldine T. Crockett, Clerk
WDNC, Charlotte, NC/sag

In re:)
)
Northwestern Financial) Case Number 01-30912
Group, Inc., et al.) Chapter 11
)
Debtors.) Jointly Administered
)
)

JUDGMENT ENTERED ON

MAY 31 2002
31

ORDER DENYING MOTION BY MECKLENBURG COUNTY
REQUESTING ADDITIONAL ESCROW

THIS MATTER comes on to be heard by the undersigned United States Bankruptcy Judge on the motion of Mecklenburg County requesting that Acquisition Group USA, Ltd. (Acquisition) be required to deposit additional monies in escrow with the debtors' attorney. For the reasons stated below, the Court concludes that this motion should be denied.

Jurisdiction

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334.

2. This matter came before the Court after proper notice, and all parties are properly before the Court.

Factual Background

3. The debtors in this case filed for Chapter 11 bankruptcy protection on April 3, 2001. Wachovia Bank, National Association (Wachovia), formerly known as First Union National Bank, holds a senior lien on the debtors' real property, which was properly

perfected. Wachovia has filed a proof of claim for this secured claim; however, the extent of Wachovia's lien is disputed.

4. In August, 2001, the debtors reached an agreement with Mecklenburg County regarding certain steps that the debtors would be required to take before the County would release an administrative hold that the County had placed on certificates of occupancy of the debtors' Lake Wylie Mobile Home Estates property.

5. On September 12, 2001, the Court entered an Order approving the debtors' sale of four mobile home parks, including the Lake Wylie Mobile Home Estates property, to Acquisition. This Order provided that the sale was to close on or before November 12, 2001.

6. The debtors' sale to Acquisition did not close in November as anticipated. However, with the proposed sale still pending, on December 11, 2001, the Court ordered that, upon the sale of the debtors' property to Acquisition, \$190,000 of the sale proceeds would be escrowed with the debtors' attorney to cover certain administrative expenses associated with the clean up of the Lake Wylie Mobile Home Estates property and to make mitigation payments.

7. The December 11, 2001, Order also stipulated that "no funds shall be paid into the escrow account with the Debtor's attorney until such time as the debt to First Union National Bank has been paid in full, including all interest and fees and costs."

8. While the debtors' sale to Acquisition has not closed as yet, the debtors' attorney and Acquisition's attorney have provided the Court with regular status reports, most recently on April 24, 2002. Reportedly, the sale has been delayed due to Acquisition's inability to secure financing. In the meantime, a deposit on the sale is being held in escrow.

9. Noting that its patience with the delays in consummating the debtors' sale to Acquisition has run out, Mecklenburg County requested that Acquisition deposit an additional \$150,000 in earnest money, and that the Court authorize the debtors' attorney to apply these funds to pay the expenses authorized in the Court's December 11, 2001, Order.

Discussion

10. The Court understands the County's frustration. However, the Court notes that Mecklenburg County's request for additional escrow monies runs contrary to the United States Bankruptcy Code. The nature of any bankruptcy case--indeed the impetus behind a debtor filing for bankruptcy protection--is that the debtor does not have enough money to pay all creditors in full. The Code provides, therefore, a carefully constructed scheme whereby similarly situated creditors receive like treatment.

11. Although the Court has not determined the extent of Wachovia's secured claim, the Court has previously ordered that no funds shall be paid in escrow for the County's claim until Wachovia

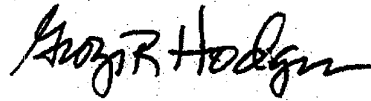
has received full payment. Therefore, the County's request runs counter to the Court's December 11, 2001, Order--as well as to the Code.

12. The Code does not provide for requiring a third party to escrow funds for the purpose of cleaning up environmental damage in anticipation of that party's purchase of real property held in the bankruptcy estate. Certainly the County's concerns regarding environmental damage to the property in this case are understandable. Moreover, these concerns were validated by the Court's December 11, 2001, Order that provided for the escrow of sale proceeds to cover the cost of cleaning up this property. But it is one thing to escrow sale proceeds; it is something entirely different to order the payment of substantial monies by a third party who is not a party to this proceeding, who is innocent of any wrongdoing, and who has not agreed to the payment.

13. The entire thrust of the Code is to provide debtors and their creditors with a collective proceeding through which claims may be settled and paid to the extent possible, so that debtors may be given a fresh start, and like creditors may receive comparable treatment. Section 105(a), cited by the County, grants bankruptcy judges the power to issue any order that is necessary to carry out the provisions of the Code. 11 U.S.C. 105(a). Nevertheless, § 105(a)--broad though it may be--does not give this Court the authority to order third parties to escrow funds in the manner

requested by Mecklenburg County. Consequently, the County's motion must be denied.

IT IS, THEREFORE, ORDERED that the motion by Mecklenburg County requesting that Acquisition Group USA, Ltd. be required to deposit additional monies in escrow with the debtors' attorney is **DENIED.**



Dated as of date entered

George R. Hodges
United States Bankruptcy Judge